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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,333	08/29/2005	Karl Lintner	SEDERM 3.3-010	5796
530 7590 02/26/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER CLARK, AMY LYNN	
			ART UNIT 1655	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
30 DAYS		02/26/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

20070220

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

Acknowledgment is made of the receipt and Applicant's election of Group I, Claims 12-27 filed on 12/4/2006. However, Applicant is not fully responsive to the restriction requirement because Applicant must expressly identify an elected species and identify the claims readable on the elected invention, as set forth in the Office action dated 9/28/2006. Applicant must elect from Specie A, Specie B, Specie C, Specie D and Specie E to be compliant.

**Group I:**

Specie A: elect one plant from which kombucha is derived from

Claim 13.

Specie B: elect one plant from which kombucha is derived from

Claim 14.

Specie C: elect one form from Claim 18, Claim 20 or Claim 21.

Specie D: elect one form of kombucha from Claim 19.

Specie E: elect one additional ingredient from Claim 22, 25 or 27.

"Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a)."

Since the submission appears to be a bona fide attempt to provide a complete reply to the prior Office action, Applicant is given a shortened statutory period of ONE MONTH or THIRTY DAYS from the mailing date of this letter, whichever is longer, to submit a complete reply. This shortened statutory period for reply supersedes the time period set in the prior Office action. This time period may be extended pursuant to 37 CFR 1.136(a).

*S. Hoffman*  
2/20-07  
SUSAN COE HOFFMAN  
PRIMARY EXAMINER

ALC  
AU 1655

of the present Amendment is respectfully requested.

In the Office Action, the Examiner required restriction to one of the following inventions under 35 U.S.C. §121 and 372:

I. Claims 12-27, drawn to a composition for topical application comprising: kombucha and a pharmaceutically acceptable carrier mixed with said kombucha.

II. Claim 28, drawn to an article comprising a composition for topical application comprising: kombucha and a pharmaceutically acceptable carrier mixed with said kombucha bound to any materials used for clothing.

III. Claim 29, drawn to a method of preventing the signs of endogenous and/or exogenous aging comprising the step of applying to the skin, mucosae or skin appendage a composition in accordance with claim 12 or 23.

In addition, the Examiner required the Applicant to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

In response, Applicant asserts that this restriction for lack of unity is improper in accordance with the decision in Caterpillar Tractor Co. v. Commissioner of Patents and Trademarks, 231 USPQ 590 (E.D. Va. 1986). Indeed,

"when the Office considers international applications as an International Searching Authority, as an International Preliminary Examining Authority, and during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to

the practice in national applications filed under  
35 U.S.C. 111".

Here, it is applicant's position that there is unity of invention and that the restriction and the election are improper.

In the alternative, however, Applicant would elect the invention of Group I, which corresponds to claims 12-27. Of the species identified by the Examiner, Applicant would elect Specie A from claim 13 -- the black tea plant from which kombucha is derived. However, this election is made with traverse, as the respective searches appear to be substantially coextensive for each of Groups I-III. Moreover, in view of the current amendment reciting the specific amounts at which the kombucha may be present, this common technical feature links each of claims 12-27. Furthermore, this common technical feature of the invention is neither anticipated nor rendered obvious by Sarill et al. (US 6,274,564).

In view of the foregoing amendment, notwithstanding the different classifications of the claims of Group I, II, and III, the "inventions" in these groups are related, and the respective searches would appear to be substantially coextensive. Therefore, it is respectfully submitted that a search for one "invention" will necessarily involve a search for the other as well. In accordance with the policies outlined in the Manual of Patent Examining Procedure, where possible, a search of all "inventions" should be made together. It is respectfully submitted that doing so in this instance will not be unduly burdensome. Reconsideration of the requirement and examination of all the claims are therefore respectfully requested and considered to be appropriate in this case. If, however, for any reason the Examiner does not believe that such

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action can be taken at this time, the Examiner is invited to telephone the undersigned at 908-654-5000 so as to overcome any additional objections.

In the event the request to examine all the claims together is not granted, Applicant reserves the right to file a divisional application corresponding to the non-elected claims.